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December 30, 1997

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

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NEW YORK, NY 10022-2585

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NEWARK, NJ 07102-5397

SPECIAL COUNSEL  
JEROLD L. JACOBS

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DEC 30 1997

Re: MM Docket No. 87-268  
Advance Television Systems (DTV Table of Allotments)

Dear Ms. Salas:

Federal Communications Commission  
Office of Secretary

On behalf of our client, Shockley Communications Corporation, licensee of Stations WKOW-TV, Madison, Wisconsin, and WAOW-TV, Wausau, Wisconsin, transmitted herewith for filing are an original and nine (9) copies of its "Motion to Dismiss or Deny 'Comments and Supplement' of Television Wisconsin, Inc." in this proceeding. Television Wisconsin, Inc. is proposing a change in the DTV Table of Allotments that is months late and technically defective.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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DEC 30 1997

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact Upon the ) MM Docket No. 87-268  
Existing Television Broadcast )  
Service )

TO: The Commission

**MOTION TO DISMISS OR DENY "COMMENTS AND SUPPLEMENT"**  
**OF TELEVISION WISCONSIN, INC.**

**SHOCKLEY COMMUNICATIONS CORPORATION ("SCC")**, licensee of Stations WKOW-TV (NTSC Ch. 27/DTV Ch. 26), Madison, Wisconsin, and WAOW-TV (NTSC Ch. 9/DTV Ch. 29), Wausau, Wisconsin, by its attorneys, hereby moves that the Commission should dismiss or deny as procedurally and substantively defective the December 17, 1997 "Comments and Supplement" filed by Television Wisconsin, Inc. ("TV Wisconsin"), licensee of Station WISC-TV (NTSC Ch. 3/DTV Ch. 50), Madison, Wisconsin, in this proceeding.

**I. Standing**

1. SCC has standing to file this Motion because it has previously participated in this proceeding and because its preliminary engineering analysis indicates that it will suffer new and objectionable DTV-to-DTV interference if TV Wisconsin's unauthorized DTV reallocation proposal is adopted. Specifically, in its December 17, 1997 pleading, TV Wisconsin proposes to substitute DTV Ch. 29 for DTV Ch. 50 on Station WISC-TV at Madison, Wisconsin, despite the fact that the Commission already authorized the allotment of DTV Ch. 29 to SCC's Station WAOW-TV at Wausau, Wisconsin in the Sixth DTV Report and Order ("Sixth R&O"), FCC

97-115, released April 21, 1997. TV Wisconsin does not propose that another DTV channel be allotted to Station WAOW-TV. Rather, it glibly and, SCC believes, erroneously asserts in its "Comments and Supplement" (at 3 and Engineering Statement) that the co-channel allotment of Channel 29 at Madison and Wausau will not adversely effect WAOW-TV. As SCC will now demonstrate, TV Wisconsin's filing is procedurally and substantively defective and should be dismissed or denied.<sup>1</sup>

**II. TV Wisconsin's Proposal is Untimely and Does Not Satisfy the Commission's Comment Limitations**

2. TV Wisconsin filed a Petition for Reconsideration ("Petition") in this proceeding on June 13, 1997 concerning the Sixth R&O's allotment of DTV Ch. 50 to WISC-TV. However, in its Petition, TV Wisconsin did not specify an alternative DTV allotment. Instead, it requested (Petition at 3) that it be afforded "90 days following release of OET Bulletin No. 69 to propose an alternative channel plan". The Commission released OET Bulletin No. 69 on July 2, 1997. See July 2, 1997 Public Notice, "OET Bulletin No. 69 issued by FCC Office of Engineering and Technology". Thus, by its own reckoning, TV Wisconsin's "alternative channel plan" should have been filed on or before October 1, 1997, but it was not. In any event, and importantly, parties to Commission rulemaking proceedings are not at liberty to establish their own pleading timetables. Section 1.429(d) clearly states that a petition for reconsideration of a Commission rulemaking action "and any supplement thereto" shall be filed within 30 day of public notice of the Commission's action. That filing deadline was June 13, 1997. Hence, TV Wisconsin's December 17, 1997 "Supplement" would have been woefully late

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<sup>1</sup> This Motion is timely filed under §§1.45(a) and 1.4(h) of the Rules in response to TV Wisconsin's December 17, 1997 filing.

even if it had been filed on October 1, let alone on December 17.

3. Furthermore, §1.420(f) of the Rules required TV Wisconsin to serve a copy of its December 17 pleading upon SCC as a "licensee...whose authorization may be modified to specify operation on a different channel," but TV Wisconsin failed to do so. (It was only by happenstance that SCC's counsel received a copy of TV Wisconsin's pleading on December 22; SCC was not mentioned in TV Wisconsin's 22-page Certificate of Service!) Thus, TV Wisconsin's pleading is not only fatally late, but, as to SCC, it is a prohibited ex parte presentation to the Commission under §1.1208(c)(2) of the Rules and Sangamon Valley Television Corp. v. U.S., 269 F.2d 221, 224 (D.C. Cir. 1959).

4. Finally, TV Wisconsin vainly attempts to qualify its "Comments and Supplement" as responsive to the Commission's December 2, 1997 Public Notice, entitled "FCC Seeks Comment on Filings Addressing Digital TV Allotments". However, that Public Notice (at 2) specifically limited comment to "whether the proposals set forth in these filing by MSTV and ALTV represent full industry agreements...[and] on whether the issues raised by MSTV are more appropriately handled on an individual case-by-case basis or through a new Table". Most importantly, MSTV affirmed the Sixth R&O's conclusion that DTV Ch. 50 should be allotted to WISC-TV. Thus, TV Wisconsin's 13th hour proposal to allot a different DTV channel to WISC-TV falls completely outside the permissible range of commentary. TV Wisconsin's brazen attempt to trample upon SCC's administrative due process rights and ignore the Commission's procedural rules and Public Notices should be summarily rejected, and its "Comments and Supplement" should be dismissed or denied.

**III. TV Wisconsin's Proposal is Technically Defective  
Because It Does Not Provide Sufficient Data to Measure  
DTV-to-DTV Interference Between WISC-TV and WAOW-TV**

5. Finally, SCC submits that TV Wisconsin's belated and unauthorized technical analysis concerning whether allotting DTV Ch. 29 to WISC-TV will create any new interference with WAOW-TV's DTV Ch. 29 is fatally defective by virtue of a gross error of omission. Simply stated, although the Zone 1 separation requirement of 196.3 kilometers for new DTV authorizations, specified in the Sixth R&O, is apparently met by TV Wisconsin's Ch. 29 proposal, WISC-TV's proposed channel change still has the potential to create significant new unacceptable interference to Station WAOW-TV, depending upon what power level is authorized for WISC-TV on Ch. 29. TV Wisconsin's Ch. 29 proposal in its Engineering Statement fails to specify any operating power level! If the intention of WISC-TV is to operate at the same 363.9 kilowatts authorized for DTV Ch. 50, and WISC-TV attempts to replicate its current NTSC Grade B service contour of 109.0 kilometers, SCC submits that there will be significant new DTV interference created with Station WAOW-TV (and also with the DTV Ch. 29 allotment of Station WMAQ-TV, Chicago, Illinois). The NTSC Grade B contours of Stations WAOW-TV and WMAQ-TV already overlap with WISC-TV. SCC urges that, by operating on co-channels, the DTV-to-DTV interference ratio of 15.27 dB for desired-to-undesired signals will not be met at locations in and around the present Grade B overlap areas. In short, the only way to accommodate DTV Ch. 29 for WISC-TV at Madison, without creating new interference to WAOW-TV or WMAQ-TV, is by significantly limiting the effective radiated power of WISC-TV's DTV Ch. 29 station. However, TV Wisconsin's proposal is silent on this critically important issue. Therefore, it must be rejected.

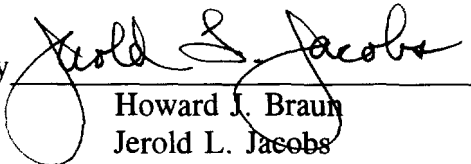
#### IV. Conclusion

6. SCC has had only five business days to address the "Comments and Supplement" that TV Wisconsin has been preparing for more than five months. Hence, SCC has not been able to accompany this Motion with a formal Engineering Statement of its own. However, SCC submits that no such Statement is needed for the Commission to see the obvious ways in which TV Wisconsin's "Comments and Supplement" are fatally defective procedurally and technically.<sup>2</sup>

WHEREFORE, in light of the foregoing, SCC respectfully requests that the Commission should dismiss or deny TV Wisconsin's proposal to substitute DTV Ch. 29 for DTV Ch. 50 for WISC-TV in the DTV Table of Allotments.

Respectfully submitted,

SHOCKLEY COMMUNICATIONS  
CORPORATION

By   
Howard J. Braun  
Jerold L. Jacobs

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Washington, D.C. 20036  
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Its Attorneys

Dated: December 30, 1997

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<sup>2</sup> Should the Commission desire further technical information from SCC concerning this matter, SCC would be pleased to submit same upon the Commission's request.

## **CERTIFICATE OF SERVICE**

I, Gillian B. Kirkpatrick, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 30th day of December, 1997, I have caused to be mailed, or hand-delivered, a copy of the foregoing "Motion to Dismiss or Deny "Comments and Supplement" of Television Wisconsin, Inc." to the following:

Roy J. Stewart, Chief\*  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W. Room 314  
Washington, D.C. 20554

Bruce A. Franca, Deputy Chief\*  
Office of Engineering and Technology  
Federal Communications Commission  
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Mr. Robert Eckert\*  
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Counsel for Television Wisconsin, Inc.

  
\_\_\_\_\_  
Gillian B. Kirkpatrick

**\*BY HAND**